

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY JAMES CHINN,

Defendant-Appellant.

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UNPUBLISHED  
December 9, 2003

No. 242765  
Wayne Circuit Court  
LC No. 00-008091-01

Before: Cavanagh, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver cocaine, fifty grams or more but less than 225 grams, MCL 333.7401(2)(a)(iii); felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, MCL 750.227b. He appeals as of right, and we affirm.

On April 14, 2000, officers from the Detroit Police Department conducted a raid, pursuant to a search warrant, at a home located on Seyburn Street in Detroit. After forcing entry into the home and failing to find anyone on the main floor, officers proceeded to the basement. In the basement, which defendant was using as a bedroom, the officers found defendant alone. Several weapons were recovered in and around the bed located in the basement. In addition, on a dresser top located within an arms reach of the bed, a plastic baggie containing a cocaine-like substance was found. The substance weighed 9.43 grams and was later positively identified as containing cocaine. In the refrigerator of the home's kitchen located on the main floor of the house, a brown paper bag containing three, knotted plastic baggies of a powdery substance was also found. The substance weighed 70.82 grams and was later positively identified as containing cocaine. It had an estimated worth of \$1,500 to \$2,000.

Another man resided, and was found, on the upper level of the home. No firearms or narcotics were seized in the vicinity of this other man and nothing was confiscated from the upstairs. The man was not arrested. Defendant was arrested and charged with the crimes for which he was convicted.

On appeal, defendant argues that there was insufficient evidence to support his conviction of possession with intent to deliver more than fifty, but less than 225 grams, of cocaine. Specifically, he argues that there was insufficient evidence that he possessed the cocaine discovered in the refrigerator. When reviewing the sufficiency of the evidence in a criminal

case, we “view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). All conflicts with regard to the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Circumstantial evidence and reasonable inferences drawn from that evidence may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Actual physical possession is not an essential element of possession with intent to deliver. *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002). “Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between defendant and the contraband.” *Id.* Possession may be joint or exclusive and is attributed to those who control the disposition of the drugs. *Id.* A person’s mere presence at a location where drugs are found is insufficient to prove control or possession. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002), citing *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992). Additional connections between the defendant and the contraband must be shown. *Id.* In *Wolfe, supra*, the Court agreed that constructive possession exists where a defendant has the right to exercise control over cocaine and has knowledge of its presence.

Viewed in a light most favorable to the prosecution, there was sufficient evidence to support an inference that defendant constructively possessed the cocaine found in the refrigerator. Defendant told officers that the house belonged to him. When asked for his address, defendant gave the address of the home that the police raided. In addition, defendant’s driver’s license confirmed that he lived at the address. Defendant had lived at the house for twenty years. In the basement, where defendant admitted he slept, four weapons and 9.63 grams of cocaine were recovered. A search of defendant revealed that he was in possession of \$580. An additional sum of cash, approximately \$307, was also found. During an interview with Officer Byron McGhee, defendant was asked how much “cocaine did you have in your house today?” Defendant replied “about four ounces or less.” There was testimony that an ounce of cocaine is equivalent to approximately twenty-eight grams. Thus, four ounces of cocaine is approximately 112 grams. Defendant indicated that he was selling cocaine for \$10 a rock and had sold about \$200 worth of cocaine that day. The cocaine recovered in the refrigerator, combined with the cocaine recovered in the basement, totaled approximately eighty grams. A reasonable inference may be drawn that defendant was referring to the cocaine in the refrigerator when admitting how much cocaine he had in his house that day. A finding of constructive possession was not based on defendant’s mere presence in his home. Defendant’s admissions, along with the recovered evidence, support an inference that defendant had the right to exercise control over the cocaine and was aware of its presence in his refrigerator. Thus, the evidence was sufficient to enable a rational jury to determine that the element of possession was established beyond a reasonable doubt.

Defendant also argues that his statement to the police was not voluntary and should have been suppressed. We disagree. “When reviewing a trial court’s determination of the voluntariness of inculpatory statements, this Court must examine the entire record and make an independent determination . . . .” *People v Shipley*, 256 Mich App 367, 372; 662 NW2d 856 (2003). But the trial court’s factual findings will not be disturbed absent clear error, and deference is given to the trial court’s assessment of the weight of the evidence and credibility of

witnesses. *Id.* at 372-373, citing *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

Voluntariness is determined by examining the totality of all the circumstances surrounding a statement to determine if it was “the product of an essentially free and unconstrained choice by its maker.” *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988). The list of factors to be considered include

the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Id.* at 334 (citations omitted).]

A promise of leniency is also a factor to consider. *Shipley, supra* at 373. The absence or presence of any one factor is not conclusive on the issue of voluntariness. *Cipriano, supra*. “The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made.” *Id.*

The record demonstrates that defendant was educated and intelligent. He completed high school and two years of college. He was thoroughly advised of his constitutional rights. He read them out loud without difficulty, and indicated that he understood them. In addition, defendant had previous experience with the police, and, at the *Walker*<sup>1</sup> hearing, testified that he knew he had the right to remain silent. The interview took place in defendant’s kitchen while the home was still being searched and was thirty-five minutes in length. Defendant never indicated that he was hungry, thirsty, or in need of medical attention. In addition, he was not threatened. On the “constitutional rights certificate of notification,” Officer McGhee noted that defendant was not high or intoxicated. McGhee testified that he has observed people under the influence of alcohol or controlled substances before and defendant did not appear to be under the influence. Defendant disputed this, however, and testified that he was under the influence of marijuana.

Defendant additionally claimed that he was coerced into making his statement because officers told him that, if he agreed to the statements and assisted the police, he would be released. During the *Walker* hearing, defendant could not identify the officers who allegedly made promises to him. He testified that it was “probably” Issac Criers, the officer in charge of the case. He subsequently indicated that McGhee also made the statements. McGhee testified that defendant was not promised leniency in exchange for his statement. Criers testified that McGhee conducted the interview alone. Criers talked to defendant only at the police station after

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<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

defendant gave his statement. The trial court found that there was no coercive conduct and that defendant's statement was voluntary. Reviewing the totality of the circumstances, and giving due deference to the trial court's finding of fact that there was no coercion, we agree that defendant's statement to Officer McGhee was voluntary. The trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Peter D. O'Connell